

# **An Overview of the Model Toxics Control Act**

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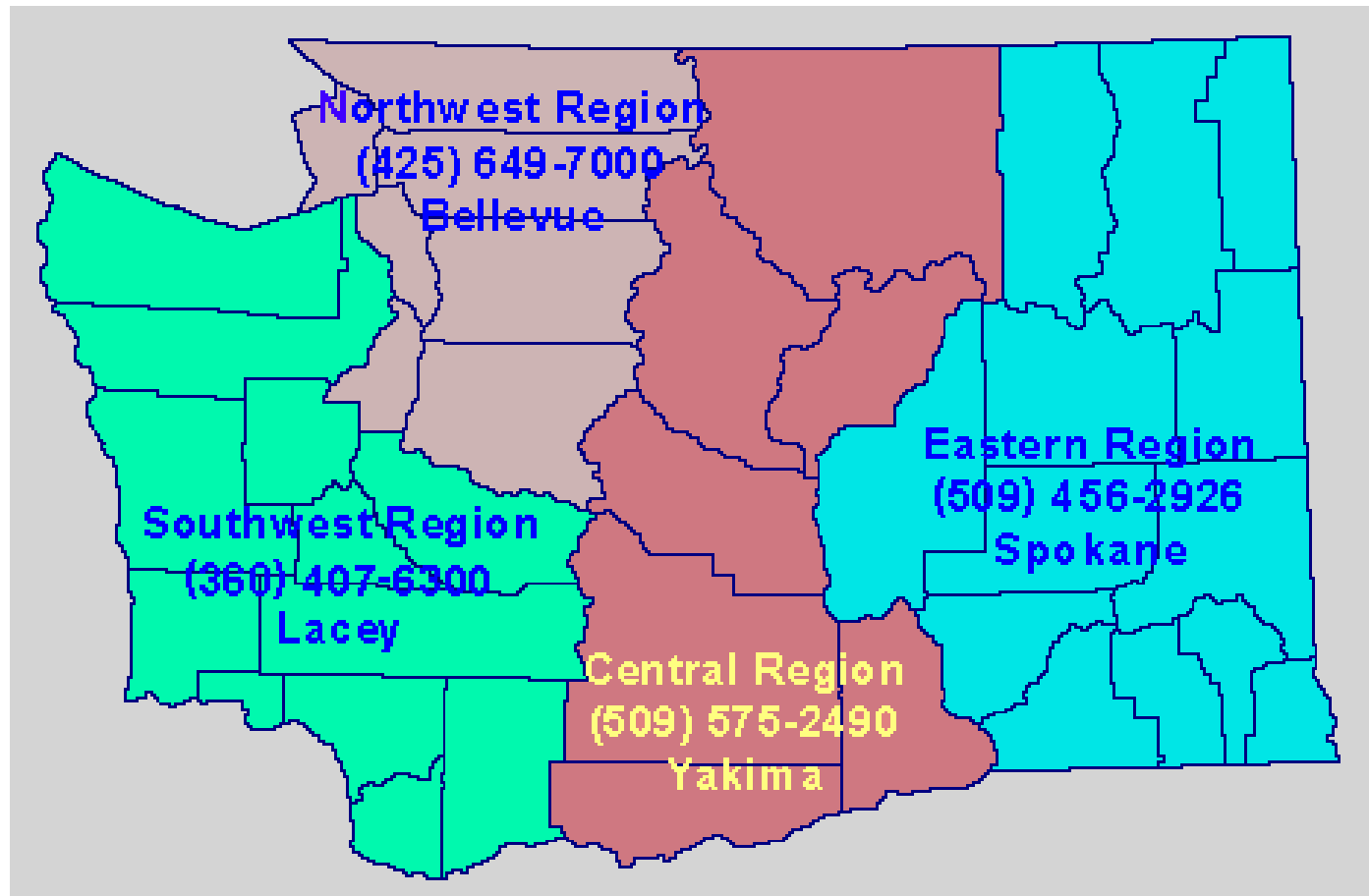
**Department of Ecology  
Toxics Cleanup Program**

**(360) 407-7199**

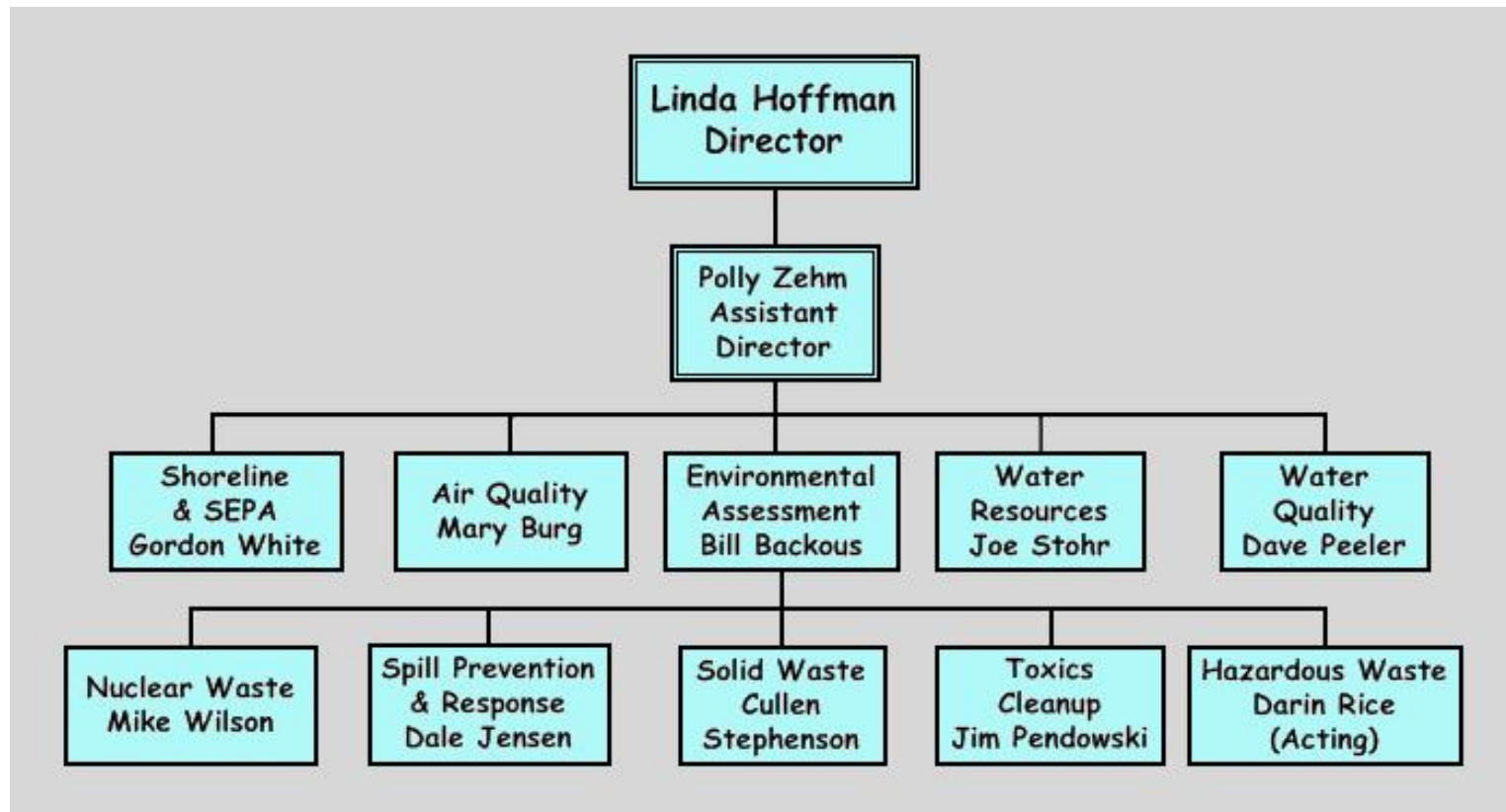
**[pkme461@ecy.wa.gov](mailto:pkme461@ecy.wa.gov)**

**For additional information, see our web page:  
<http://www.ecy.wa.gov/programs/tcp/cleanup.html>**

# Department of Ecology Regional and Field Offices



# Ecology Program Managers



# Regulatory Authority

## Statute

- Initiative 97, passed by the voters in November, 1988 general election
- Codified as Chapter 70.105D RCW

## Rules

- WAC 173-340 (Cleanup regulation)
- WAC 173-204 (Sediment management standards)



# Key Principles

- Polluter pays
- Permanent remedies
- Public participation
- Bias towards action
- Innovation



# Hazardous Substance Definition

- Any substance that is a hazardous substance under federal superfund law
- Dangerous or extremely dangerous hazardous waste under state hazardous waste law
- Petroleum and petroleum products
- Other substances determined by Ecology by rule



# Definition of Facility

- Physical structures including:

Buildings	Pipelines
Landfills	Ponds
Wells	Vehicles
- Any site or area where a hazardous substance has been disposed of or otherwise come to be located.



# Example Facility--Discarded Drums





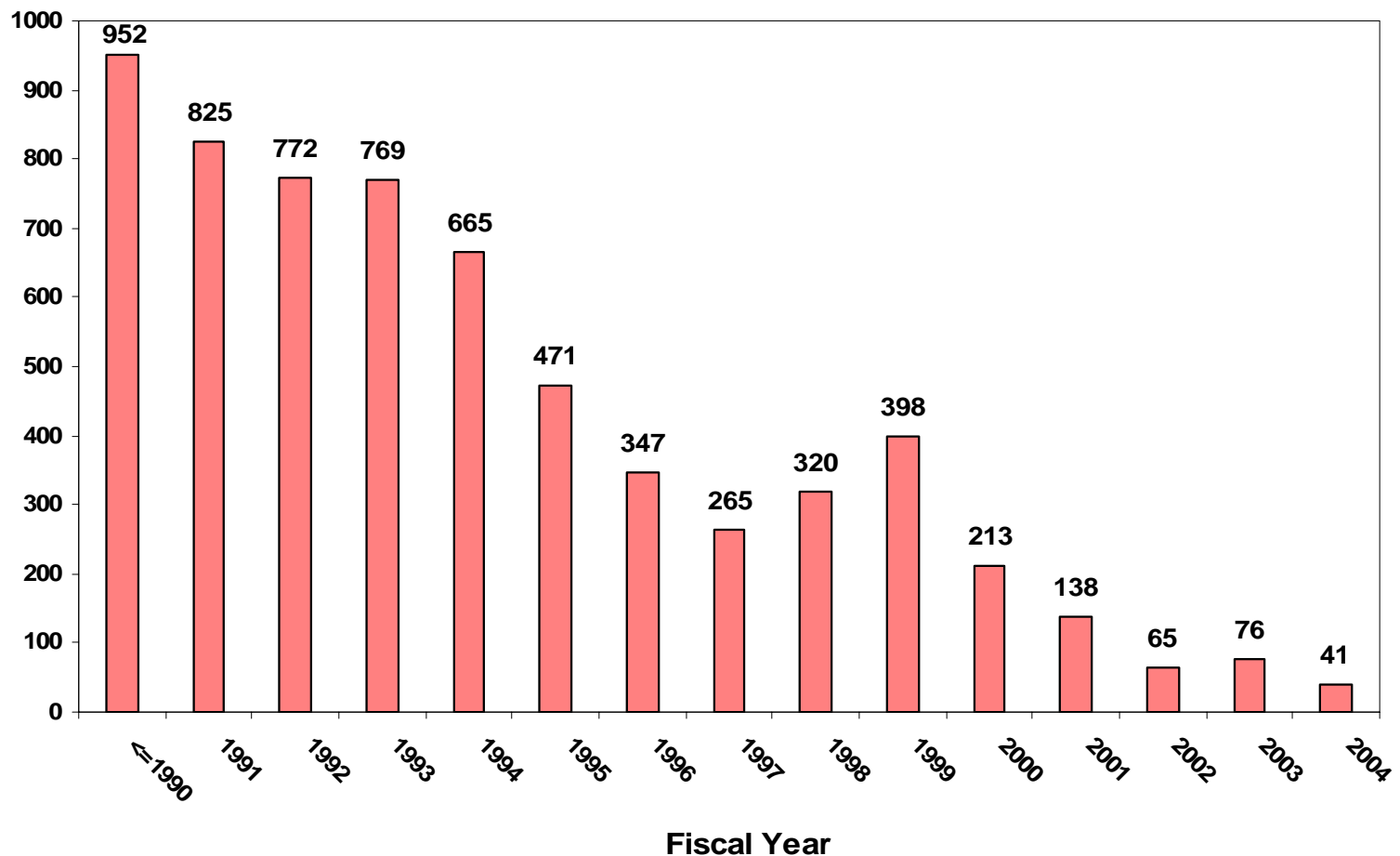
# Example Facility--Landfill



# Example Facility--Gas Station



# Number of Underground Storage Tank Releases as of January 20, 2004





# Example Facility--Industrial Areas



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# Example Facility Mining Sites & Facilities



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# Example Facility--Military Bases



# Potentially Liable Person (PLP)

- Current owner and operator
- Owner and operator at the time of release
- Persons who owned the hazardous substance and arranged for disposal, treatment or transport  
(i.e. generators)



# Potentially Liable Person (PLP)

- Persons who transported the hazardous substance  
(i.e. transporters)
- Manufacturers of hazardous substances that cause pollution when used according to their instructions  
(e.g. pesticides)





# Nature of Liability

- Joint and Several--One or all PLPs may be liable for entire cleanup
- Strict liability--PLPs are liable regardless of who's fault it was that pollution occurred

**NOTE:** Except in emergencies, Ecology must issue PLPs a notice using the procedures in WAC 173-340-500 before ordering action at a site



# Defenses to Liability

- Act of God or Act of war
- Act or omission of a third party (e.g. trespasser), provided utmost care was used
- Innocent purchaser, provided used “all appropriate inquiry” into previous ownership and uses of property
- Substance lawfully used for domestic purposes



# Defenses to Liability

- Substances applied to food crops without negligence and in accordance with all applicable laws and regulations
- Lenders that didn't participate in the management of the facility
- Plume Clause: Substance came to be located on the property solely as a result of migration through the ground water from an off-property source.



# Steps in the Cleanup Process

- Site discovery
- Initial investigation
- Site hazard assessment & ranking
- Interim action (if necessary)
- Remedial investigation/feasibility study



# Steps in the Cleanup Process

- Selection of cleanup action
- Site cleanup
- If contamination left on site:
  - ✓ Institutional controls
  - ✓ Financial assurance
  - ✓ Monitoring
  - ✓ Periodic reviews



# MTCA Reporting Requirements (WAC 173-340-300)

- UST Sites must report confirmed releases within 24 hours
- Other sites must report within 90 days of discovery of a release
- Persons conducting independent remedial actions must report within 90 days of completion of the remedial action
- If granted a tax exemption, must submit report at the completion of the remedial action

